

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
O3b Limited)	IBFS File No. SAT-MOD-20160624-00060,
)	SAT-AMD-20161115-00116, SAT-AMD-
Request for Modification of U.S. Market Access)	20170301-00026, and SAT-AMD-20171109-
for O3b Limited’s Non-Geostationary Satellite)	00154
Orbit System in the Fixed-Satellite Service and in)	
the Mobile-Satellite Service)	Call Sign S2935

MEMORANDUM OPINION AND ORDER

Adopted: February 19, 2020

Released: February 25, 2020

By the Commission:

I. INTRODUCTION

1. By this Memorandum Opinion and Order, we deny Iridium Constellation LLC’s (Iridium) Petition for Partial Reconsideration of the Commission’s decision to approve O3b Limited’s request to modify its U.S. market access grant for its non-geostationary satellite orbit (NGSO), fixed-satellite service (FSS) system.¹

II. BACKGROUND

2. In 2012, the International Bureau granted market access for O3b’s NGSO FSS system, which operates under the authority of the United Kingdom.² In 2016, as part of a processing round for NGSO-like applications in the Ku-and Ka-band frequencies, O3b filed a petition for declaratory ruling to modify its grant of U.S. market access by increasing the number of satellites comprising its NGSO FSS system³ and a subsequent amendment seeking to add the 19.7-20.2 GHz and 29.5-30.0 GHz frequency bands to the spectrum that its NGSO FSS system is authorized to use.⁴ In 2017, O3b amended its petition to expand the requested use of these bands beyond FSS, by including a mobile satellite service (MSS) designation,⁵ and to add a proposal to access the U.S. market in the 19.3-19.7 GHz and 29.1-29.5 GHz

¹ Iridium Constellation LLC, Petition for Partial Reconsideration (filed July 6, 2018) (Iridium Petition).

² O3b was initially granted U.S. market access through individual earth stations transmitting to and receiving from eight satellites in medium earth orbit. *See* O3b Limited, IBFS File Nos. SES-LIC-20100723-00952 (granted Sept. 25, 2012), SES-LIC-20130124-00089 (granted June 20, 2013) and SES-LIC-20130618-00516 (granted June 24, 2015). In January 2015, the International Bureau granted O3b’s petition to consolidate its several U.S. market access grants under a single grant, and to increase the number of satellites from eight to twelve. O3b Limited, IBFS File Nos. SAT-LOI-20141029-00118 and SAT-AMD-20150115-00004 (granted Jan. 22, 2015).

³ O3b Request for Modification of U.S. Market Access Grant, IBFS File No. SAT-MOD-20160624-00060.

⁴ O3b Amendment, IBFS File No. SAT-AMD-20161115-00116.

⁵ While these bands are allocated for both FSS and MSS use, currently there are only service rules for FSS operations.

bands, which are restricted for use by MSS feeder links.⁶ Iridium filed a petition to deny O3b's petition for declaratory ruling, asserting in part that O3b's request for MSS operations was inconsistent with the Commission's Ka-band plan, which provides only for NGSO FSS operations, even where there are allocations for both FSS and MSS.⁷ Iridium argued that without a designation authorizing MSS use of the 19.7-20.2 GHz and 29.5-30.0 GHz bands, O3b had no basis to operate MSS feeder links in the adjacent bands at 19.3-19.7 GHz and 29.1-29.5 GHz.⁸ Iridium further asserted that scarce feeder link spectrum should be reserved for providers that conduct MSS operations that do not conflict with the Ka-band plan.⁹

3. In June 2018, the Commission granted O3b's petition for declaratory ruling to expand its access to the U.S. market, including O3b's request for authority to engage in MSS operations in the 19.7-20.2 GHz and 29.5-30.0 GHz frequency bands, and to employ feeder links associated with such MSS operations in the 19.3-19.7 and 29.1-29.5 GHz bands to communicate with MSS space stations.¹⁰ In so ruling, the Commission denied Iridium's petition to deny, noting the existing MSS allocations in the 19.7-20.2 GHz and 29.5-30.0 GHz bands and the fact that O3b's MSS operations would have the same characteristics as the NGSO FSS systems that are currently operating in those bands.¹¹ The Commission concluded it was in the public interest to grant O3b market access to operate in the bands and waived the Ka-band plan on its own motion for O3b's MSS operations in the 19.7-20.2 GHz and 29.5-30.0 GHz bands.¹² The Commission's O3b market access grant noted it was "subject to modification to bring them into conformance with any rules or policies adopted by the Commission in the future."¹³

4. Iridium now seeks partial reconsideration of the *O3b Order*. Specifically, Iridium requests that O3b's market access in the 19.7-20.2 GHz and 29.5-30.0 GHz bands be conditioned on the outcome of future proceedings addressing technical and/or service rules for NGSO MSS stations in those bands.¹⁴ Iridium argues that this same condition should also be applied to O3b's market access to operate NGSO MSS feeder links in the 19.4-19.6 GHz and 29.1-29.3 GHz bands,¹⁵ as these operations are dependent on the MSS designation of O3b's market access in the 19.7-20.2 GHz and 29.5-30.0 GHz

⁶ O3b Amendment, IBFS File No. SAT-AMD-20171109-00154, Narrative at 5, and 47 CFR § 2.106, NG166.

⁷ The Ka-band Plan was developed in a series of orders to designate discrete spectrum bands for specific types of systems including GSO FSS, NGSO FSS, and certain Mobile Satellite Systems. See *O3b Limited*, Order and Declaratory Ruling, 33 FCC Rcd 5508 (2018) (*O3b Order*).

⁸ Iridium Constellation LLC, Petition to Deny or Remove from Processing Round (filed Dec. 26, 2017) at 4-5 (Iridium Petition to Deny or Remove).

⁹ *Id.* at 5.

¹⁰ *O3b Order*, 33 FCC Rcd at 5516.

¹¹ *Id.* The Commission observed that although O3b's NGSO MSS operations would be indistinguishable from NGSO FSS operations in the 19.7-20.2 and 29.5-30 GHz bands being conducted by earth stations in motion (ESIMs), there are currently no service rules for conducting ESIM operations with NGSO FSS space stations. Consequently, until such rules governing operation of ESIMs are adopted, O3b's NGSO MSS operations in the 19.7-20.2 and 29.5-30 GHz bands must be conducted on a non-interference, non-protected basis with respect to the NGSO FSS operations in these bands. *Id.* Such operations are currently authorized by a waiver of section 2.106, pending the Commission's resolution of a proceeding proposing rules to allow NGSO FSS operations on a primary basis in certain Ku- and Ka-band frequencies. See *Facilitating the Communications of Earth Stations in Motion with Non-Geostationary Orbit Space Stations*, Notice of Proposed Rulemaking, 33 FCC Rcd 11416 (2018).

¹² *Id.*

¹³ *Id.* at para. 54.

¹⁴ Iridium Petition at 2-3.

bands.¹⁶ Iridium asserts that allowing O3b to access the U.S. market in these bands, as currently conditioned, is meaningless unless the Commission also conditions O3b's grant on the outcome of the proceedings in which rules are developed.¹⁷ Iridium also notes that adding such a condition is in furtherance of section 25.217(e) of the Commission's default service rules, which provides that space station or earth station licensees granted operations in bands for which there are no service rules, must comply with any subsequently adopted service rules within 30 days of their effective date.¹⁸

5. O3b opposes Iridium's Petition on two grounds.¹⁹ First, O3b asserts that the Iridium Petition is procedurally deficient because Iridium raises this issue for the first time. O3b states that Commission rules provide that a petition for reconsideration may not rely on facts or arguments not previously presented unless the petitioner explains why it could not have raised the issue earlier and there is a strong public interest showing for the new material.²⁰ Second, O3b asserts that its market access in bands designated for NGSO FSS and MSS feeder links is already subject to a condition requiring modification to bring the terms of its market access into conformance with any new rules or policies adopted by the Commission in the future. O3b states that this condition does not need to be supplemented to specifically mention future proceedings involving MSS spectrum.²¹ Iridium filed a reply, reiterating that a specific condition will make it "incumbent on O3b to conform" its operations to rules adopted in future rulemakings.²² It also asserts that the Petition for Partial Reconsideration is the first opportunity to raise the issue, particularly since the Commission waived the Ka-band plan to allow MSS operations on its own motion.²³

III. DISCUSSION

6. We find that the conditions placed on O3b's grant of market access are sufficient to address Iridium's concerns. In the *O3b Order*, the Commission acknowledged that although the 19.7-20.2 GHz and 29.5-30.0 GHz frequency bands were allocated to both FSS and MSS, there were no service rules for MSS operations in these bands. The Commission, therefore, imposed various conditions including power limits and a requirement that operations in the United States in these bands be on a non-interference, non-protected basis with respect to NGSO FSS operations.²⁴ It further stated that O3b's use of MSS feeder links in the 19.3-19.7 GHz and 29.1-29.5 GHz bands must be coordinated with other NGSO MSS systems, including Iridium's, before transmissions to earth stations in the United States could be conducted.²⁵ Finally, as noted above, O3b's U.S. market access is subject to modification to

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¹⁵ Although the Commission authorized O3b to operate MSS feeder links in the 19.3-19.7 GHz and 29.1-29.5 GHz bands, Iridium's petition for partial reconsideration only addresses the authorization of a subset of these bands—*i.e.*, operations at 19.4-19.6 GHz and 29.1-29.3 GHz. Iridium is authorized to operate gateway earth stations in this subset. *See O3b Order*, 33 FCC Rcd at 5516.

¹⁶ Iridium Petition at 2-3.

¹⁷ *Id.* at 3.

¹⁸ *Id.*, and Iridium Constellation LLC Reply to Petition for Reconsideration (filed July 31, 2018) (Iridium Reply) at 2; 47 CFR § 25.217(e).

¹⁹ Opposition of O3b Limited to Petition for Partial Reconsideration (filed July 19, 2018) (O3b Opposition).

²⁰ *Id.* at 1-2.

²¹ *Id.* at 2.

²² Iridium Reply at 3.

²³ *Id.*

²⁴ *O3b Order*, at paras. 21-22.

²⁵ *O3b Order*, at para. 23.

bring it into compliance with any rules or policies the Commission adopts in the future.²⁶ The specificity of Iridium's proposed condition is unnecessary because it would reiterate conditions that are already in place. The *O3b Order*, as conditioned, already provides notice to O3b that the terms of its market access grant are subject to change as the result of future Commission rulemaking decisions, including any that address technical and/or service rules for MSS or MSS feeder link bands.

7. Iridium argues that this condition is inadequate because it does not explicitly make the continued validity of O3b's market access grants contingent on O3b affirmatively conforming its MSS service to any new rules covering such services in the bands at issue here. Rather, Iridium asserts, O3b's market access grant could remain unchanged despite a potential conflict with new rules until O3b requests and secures a modification, or until the Commission acts on a *sua sponte* basis to effectuate such a result.²⁷ We disagree and find that no additional condition is necessary, because the express terms of O3b's market access grant and the Commission's rules address Iridium's concern and ensure O3b's compliance with any post-grant requirements adopted by the Commission.²⁸ As particularly relevant here, section 25.217 of the Commission's rules requires licensees and holders of market access grants to comply with frequency band specific service rules within 30 days of the rules' effective date, which places on O3b the type of affirmative obligation to act that Iridium claims is missing.²⁹

8. In sum, because there are already protections in place to ensure that O3b will be required to comply with any relevant changes or modifications to the Commission's rules, we deny Iridium's Petition.³⁰

²⁶ *O3b Order*, at para. 54 (emphasis added).

²⁷ See Iridium Reply to Opposition to Petition for Reconsideration (filed July 31, 2018).

²⁸ See, e.g., *O3b Order* at para. 31 (noting that when the Commission adopts new EPFD limits in the future, "O3b's operations subject to this grant...must comply with those limits or procedures"); and at para. 37 (conditioning grant of O3b's application on the outcome of future rulemakings). The Communications Act also gives the Commission broad authority to ensure that holders of Commission authorizations comply with its rules. See 47 U.S.C. § 303(f) (the Commission's power to adopt regulations to prevent interference by changing the frequencies, authorized power, or times of operation of any station without the licensee's consent if in the public interest); 47 U.S.C. § 312(a)(4) (ability of the Commission to revoke a license for willful violation of any Commission rule); and 47 U.S.C. § 312(b) (ability of Commission to order licensee to cease actions that violate its regulations).

²⁹ 47 CFR § 25.217. In addition, we note that O3b must request Commission approval to modify the terms and conditions of its market access grant. 47 CFR § 25.117 (no modifications effecting "the terms and conditions of the station authorization shall be made except upon application and grant of such application by the Commission"); see also 47 CFR § 25.160 (administrative sanctions for failing to comply with Commission rules).

³⁰ We note that O3b has asserted that Iridium's Petition was procedurally flawed. We find that argument moot given our denial of that Petition.

IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, that pursuant to section 1.106 of the Commission's rules, 47 CFR § 1.106, the Petition for Partial Reconsideration filed by Iridium Constellation LLC on July 6, 2018, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary